

IN THE UNITED STATES DISTRICT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DUCKHEE LEE, IRENE LEE,
and ADRIAN LEE, individually
and on behalf of the Estate of
JUNGSOON LEE

Plaintiffs

vs.

UNITED STATES OF AMERICA,

Defendant

No. 5:18-cv-00088-JKP

MOTION TO ESTABLISH SPECIAL NEEDS TRUST

The Court-appointed Guardian Ad Litem for Duckhee Lee respectfully asks this Court to enter a decree establishing a trust for the sole benefit of Mr. Lee. After having conferred with Plaintiffs' counsel, Plaintiffs join this motion. After having conferred with the United States' counsel, the United States takes no position on this matter.

BACKGROUND

This is a lawsuit under the Federal Tort Claims Act that reached a resolution in December 2019. This Court appointed the Guardian Ad Litem to review the settlement to ensure that the settlement was in the best interests of

Mr. Duckhee Lee. *See* Dkt. No. 43 (and following text order). Following appointment, the Guardian Ad Litem filed his report approving of the settlement. Dkt. No. 44. This Court, after having reviewed the report and the Parties' motion to approve settlement, approved the settlement. Dkt. No. 51. After attorney's fees, costs, lien payoffs, the Court approved a disbursement of \$600,000 to each child of Mr. Lee and any remaining funds to Mr. Lee.

The United States has worked to gain final approval and has notified parties that the Department of Justice has given final approval for this settlement. The United States will submit this settlement for funding with the Department of Treasury for disbursement into Plaintiffs' counsel's IOLTA account. However, before Plaintiffs' counsel may disburse the funds from their IOLTA account, the Guardian Ad Litem requests the Court establish a special needs trust for the benefit of Mr. Duckhee Lee.

ANALYSIS

Mr. Duckhee Lee is an adult, age 60, as of the filing of this Motion. There is no court-appointed guardian of the estate for Mr. Lee, and there is no proceeding pending for the appointment of such guardian. He is an incapacitated person as defined in Section 142.007 of the Texas Property Code. He is also a disabled person as defined in the Social Security Act, Section 1614(a)(3), 42 U.S.C. § 1382c(a)(3).

The parties have reached a settlement in this cause in favor of Mr. Lee consisting of a lump-sum cash amount within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

Applicant will show this Court that it would be in the best interest of the Proposed Beneficiary for the settlement proceeds allocated for the benefit of the Proposed Beneficiary to be held, invested, administered, and distributed by Capital First Trust Company, a financial institution (as defined by Section 201.101, Texas Finance Code) that has trust powers and exists and does business under the laws of the state of Texas or another state in the United States, in trust for the sole benefit of the Proposed Beneficiary pursuant to the provisions of Section 142.005 of the Texas Property Code. *See* Dkt. No. 44 (GAL Report expounding on these issues).

Therefore, Applicant moves the Court pursuant to Section 142.005 of the Texas Property Code to enter a decree establishing the Duckhee Lee Special Needs Trust for the sole benefit of the Proposed Beneficiary, having the terms and provisions set forth in **Exhibit "A."** Further, Applicant moves the Court to appoint Capital First Trust Company to serve as the trustee of the Duckhee Lee Special Needs Trust.

Respectfully Submitted,

/s/ Scott M. Bage

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Court Appointed Guardian *ad litem*
for Duckhee Lee

/s/ Tom Jacob

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CERTIFICATE OF SERVICE

By my signature above, I certify that a copy of Motion to Establish Special Needs Trust has been sent to the following on October 26, 2020 via the Court's CM/ECF notice system and regular mail.

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